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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,034	10/28/2005	Jonathan Burr	JUSL-119 (62800-028)	4687
23630 7590 02/26/2010 MCDERMOTT WILL & EMERY LLP 28 STATE STREET BOSTON, MA 02109-1775				
EXAMINER				
LONG, PONYA M				
ART UNIT		PAPER NUMBER		
3689				
NOTIFICATION DATE		DELIVERY MODE		
02/26/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: JONATHAN BURR, GARY GATES, and  
ALAN GEORGE SLATER

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Application No. 10/526,034  
Technology Center 3600

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Mailed: February 25, 2010

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Before QUITA GOULD *Supervisory Paralegal Specialist*  
GOULD, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 1, 2010. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief dated August 17, 2009. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the Specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 C.F.R. § 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the Specification as corresponding to each claimed function must be set forth with reference to the Specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on pages 2-7 of the Appeal Brief filed August 17, 2009 is deficient because it does not refer to the Specification as filed with the application for independent claims 81 and 98. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to Appellants failure to provide a Summary of the Claimed Subject Matter as required by 37 C.F.R. § 41.37(c)(1)(v), an entire new brief need not, and should not, be filed.

Rather, a paper providing a Summary of the Claimed Subject Matter as required by 37 C.F.R. § 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) hold the Appeal Brief filed August 17, 2009 defective, as required by 37 C.F.R. § 41.37(d);

2) notify the Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 C.F.R. §41.37(c)(1)(v);

3) acknowledge and consider any "paper" submitted by Appellants to correct the Appeal Brief; and

4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/Ssc

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